

AF/Jew

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL
FORM

		Application Number	10/721,299
		Filing Date	November 24, 2003
		First Named Inventor	Hall
		Art Unit	3721
		Examiner Name	Huynh
Total Number of Pages in This Submission	5	Attorney Docket Number	54024-44719

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any over-payment, to Deposit Account Number <u>20-0823</u> . I have enclosed a duplicate copy of this sheet.	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> After Final	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Affidavits/declarations(s)	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Certified Copy of Priority Document(s)		
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Thompson Coburn LLP		
Signature			
Printed name	Joseph M. Rolnicki		
Date	May 8, 2006	Reg. No.	32,653

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	Joseph M. Rolnicki	Date	May 8, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICECERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on

May 8, 2006

Joseph M. Rolnicki
Joseph M. Rolnicki
Reg. No. 32,653

In re application of: Hall, William A.	:	
Serial No.: 10/721,299	:	Examiner: HUYNH, Louis K.
Filed: November 24, 2003	:	Group Art Unit: 3721
For: FOOD PACKAGING CLOSURE	:	
APPARATUS	:	

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 CFR § 41.41

Page 6 of the Examiner's Answer presented new grounds of rejection that were not presented in the Final Rejection of the application claims. This Reply Brief addresses the new grounds of rejection.

On page 6 of the Examiner's Answer, it is contended that because the specification states that the tubular body could be formed with a somewhat rigid plastic material, then the vertical wall 42 of the tubular body 20 disclosed by the Peeples reference is "equivalent" to the claimed means for attaching and means for removably attaching recited in claims 1 and 2, respectively. However, this rejection is looking at only certain features of two embodiments of

the invention described on page 7 of the specification, while ignoring other features of the two embodiments.

Page 7 of the specification describes two embodiments of the invention. In the first embodiment, the tubular body is constructed of a material that gives the body a limited resilience which allows the second end edge 34 of the tubular body to stretch slightly and engage in a tight-sealing fit around the packaging 56 of a food product 14. This is described in lines 6-9 of page 7. Thus, the "means for attaching" or "means for removably attaching" in this first described embodiment is the limited resilience of the tubular body 16 that stretches slightly when the tubular body is positioned on food packaging that does not have any appreciable resilience. The stretching of the tubular body allows the tight-sealing fit of the tubular body around the food packaging.

The second embodiment of the invention described on page 7 of the specification comprises a tubular body 16 that is formed of a somewhat rigid plastic material. Passing the food product 14 through the interior of this second embodiment of the tubular body 16 will result in the second end edge 34 of the tubular body compressing the food product and engaging in a tight-sealing fit around the packaging 56 of the food product. This embodiment is described in lines 9-15 of page 7 of the specification.

Thus, when the tubular body 16 is attached to food packaging of a product that has a resilience, the "means for attaching" or the "means for removably attaching" is the somewhat rigid plastic material of the tubular body which functions to compress the food product to produce a sealing fit. The Peeples reference fails to identically show this claimed "means."

In the Peeples reference, a rigid tubular body is attached to a rigid pan. This is not the same "means for attaching" or "means for removably attaching" the rigid tubular body of claims 1 and 2 described in the specification. The vertical wall 42 of the Peeples reference does not compress the pan it is attached to and, therefore, the Peeples reference does not identically show the "means for attaching" or "means for removably attaching" cited in respective claims 1

and 2. Of the resilient tubular body and rigid tubular body embodiments of the invention described on page 7 of the specification, the Peeples reference only discloses a rigid collar vertical wall 42. The vertical portion 42 of the collar engages the side walls 34 and/or the end walls 36 of the pan 30 (column 3, lines 62-64 of the Peeples reference). The Peeples reference does not disclose the "means for attaching" the rigid tubular body of the invention 16 on the packaging of a food product 14 by "compressing the food product and engaging in a tight-sealing fit around the packaging 56 of the food product" as described on page 7 of the specification.

To determine whether a claim limitation is meant literally where expressed as a means for performing a stated function, a court must compare the accused structure with the disclosed structure and must find equivalent structure as well as identity of claimed function for that structure.

Pennwalt Corp. v. Durand-Wayland, Inc., 833 F.2d 931, 4 U.S.P.Q. 2d. 1737 (Fed. Cir. 1987).

The Peeples reference does not identically show the claimed function for the rigid tubular body embodiment of the invention as required by the above-cited case law. The Peeples reference does not identically show the vertical wall 42 of the collar compressing the food product as it engages in a tight-sealing fit around the packaging of the food product. Because the Peeples reference does not identically show this function, the reference does not anticipate claims 1 or 2, and the rejection of the claims should be reversed and the claims allowed.

The Examiner's Answer also contends that the Peeples reference discloses the claimed rim of the invention that engages with the lid of the invention. However, the rejection is based on interpreting two parts of the Peeples collar, the collar ridge 24 and the collar flange 26 as the claimed rim. The collar flange 26 is relied on for a rim that projects outwardly from the tubular body as recited in claim 7, and the ridge 24 is relied on for a rim that engages with a lid. However, the language of the claims describes the single rim as both projecting outwardly from the tubular body and engaging with a lid. The two separate structures 24, 26 of the Peeples

reference do not identically show this one feature of the invention recited in the claims. The interpretation of the Peeples reference is based on hindsight of the invention. Because the Peeples reference does not identically show the claimed rim of the invention, the rejections of claims 7 and 8 should be reversed and the claims allowed.

The Examiner's Answer also presents arguments that the pan 30 disclosed in the Peeples reference is packaging of a food product because the pan contains a food product. This interpretation is also based on hindsight of the invention.

The Peeples reference describes a pan of the type found in a typical kitchen.

A general rule of interpretation is that words in a claim will be given their ordinary and accustomed meaning, unless it appears that the inventor used them differently.

Casler v. United States, 15 Cl.Ct. 717, 9 U.S.P.Q. 2d 1753 (1988).

The ordinary skilled artisan would not consider the ordinary and accustomed meaning of a pan to be food packaging. The rule is not whether a "pan" could be food packaging, but whether the ordinary and accustomed meaning of "food packaging" includes a pan. Interpreting the pan as food packaging is based on hindsight of the invention, and therefore the rejection of claim 14 should be reversed and the claim allowed.

Respectfully submitted,

Thompson Coburn LLP

By: Joseph M. Rolnicki
Joseph M. Rolnicki
Reg. No. 32,653
One US Bank Plaza
St. Louis, MO 63101-1693
(314) 552-6286